



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/173586

PRELIMINARY RECITALS

Pursuant to a petition filed April 11, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on April 28, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner may contest the removal of herself from her FoodShare household due to imposition of an intentional program violation sanction.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On April 4, 2016, the Department issued written notice to the petitioner advising that she was not eligible to receive FoodShare for a period of 12 months beginning May 1, 2016 because of a violation of FoodShare program rules. This reduced the FoodShare benefit for her household from \$332.00 to \$190.00.

3. In February 2016, the Department issued an *Administrative Disqualification Hearing Notice* to the petitioner, advising that a FS intentional program violation hearing was scheduled for her on March 21, 2016. The March 21, 2016 hearing was conducted by Administrative Law Judge Gagnon of this office and the petitioner did not appear.
4. On March 31, 2016, Judge Gagnon issued a decision that sustained the Department's position that the petitioner above had engaged in FS trafficking, and that she should be disqualified from the FoodShare program for one year. Wisconsin Division of Hearings and Appeals decision No. FOF/171195.
5. Petitioner (respondent in the IPV case) did file a rehearing request in #171195 but that was denied.

DISCUSSION

The Department is required to make an Intentional Program Violation (IPV) determination for a recipient's behavior if it includes:

1. Making false or misleading statements or misrepresenting, concealing or withholding facts to become eligible or to remain eligible for benefits, or
2. Committing any act that constitutes a violation of FoodShare regulations or state statutes relating to the use, presentation, transfer, acquisition, receipt or possession of FS, i.e., trafficking FS.

See, FoodShare Wisconsin Handbook (FSWH), § 7.3.2.4.

If the Department believes that an IPV has been committed, it schedules an IPV hearing before a state Administrative Law Judge. That was done here. Following that hearing, the Administrative Law Judge issues a decision that either sustains or reverses the recommended IPV sanction. In this case, the Judge sustained the sanction, which allows the sanction to go forward.

Following the Judge's decision, the Department issued notices to the petitioner advising her of the starting date for sanction imposition. Those notices incorrectly advised her that he had a right to request another hearing to challenge the sanction imposition. The pertinent federal rule says there is no further right to an administrative hearing regarding the sanction:

(8) *Imposition of disqualification penalties.* (i) If the hearing authority rules that the individual has committed an intentional Program violation, the household member must be disqualified in accordance with the disqualification periods and procedures in paragraph (b) of this section. ...

(ii) No further administrative appeal procedure exists after an adverse State level hearing. The determination of intentional Program violation made by a disqualification hearing official cannot be reversed by a subsequent fair hearing decision. The household member, however, is entitled to seek relief in a court having appropriate jurisdiction. ...

7 C.F.R. § 273.16(e)(98)(i)-(ii).

Thus, the petitioner has no right to a hearing to contest the one-year IPV sanction. She had the option of appealing to circuit court. This appeal must therefore be dismissed.

CONCLUSIONS OF LAW

That this office has no jurisdiction to consider the correctness of imposition of an FS IPV sanction where an administrative hearing decision has been issued and the respondent did not timely proffer a good cause reason for nonappearance.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 8th day of June, 2016

David D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on June 8, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability